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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/774,982	02/09/2004	Kurt J. Fredrickson	KF-2004-01	9597

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Mark D. Kelly
5401 N. Shoreland Ave.
Whitefish Bay, WI 53217-5132

EXAMINER

GABLER, PHILIP FRANCIS

ART UNIT	PAPER NUMBER
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3637

MAIL DATE	DELIVERY MODE
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05/08/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/774,982

Applicant(s)

FREDRICKSON, KURT J.

Examiner

Philip Gabler

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 April 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 26-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 26-41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10 April 2007 has been entered.

Claim Objections

2. Claim 33 is objected to because of the following informalities: the word "engages" on the sixteenth line should be "engage," and the word "attacment" in the eighteenth line should be "attachment." Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 33-37 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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5. Claim 33 recites the limitation "an attachment rod" on line 15. It is unclear whether this is the same attachment rod previously recited or is a new and separate limitation. The claim is accordingly deemed indefinite.
6. Claims 34-37 are deemed indefinite as being dependent on an indefinite claim.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 26-28, 32-34, 38, 39, and 41 rejected under 35 U.S.C. 103(a) as being unpatentable over West (US Patent Number 5404682) in view of Meyer (US Patent Number 6273390).
9. Regarding claim 26, West (Figures 1A, 1B, and 1C) discloses a mounting apparatus for a post, comprising: a post base (153) having a concave bottom surface (154) and an upwardly extending sidewall (172) dimensioned to engage an inner sidewall of a post (156) to be mounted; a lower bearing (151) positioned beneath the post base and providing a center hole (157) therethrough, the lower bearing comprising a substantially flat bottom surface and a top surface that is convex and corresponding in curvature to the concave bottom surface of the post base; and means (169) to releasably secure the post base and lower bearing to an attachment rod (158) that is angularly fixed and immoveably secured in a substructure (180), the substructure

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having a substantially fiat surface corresponding to the substantially flat bottom surface of the lower bearing. West does not disclose an elongate slot. Meyer (Figure 3) discloses a mounting apparatus having a post base (17, 25, 31) with an elongate slot (21) therethrough that allows the post base to be angularly adjusted. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include an elongate slot in West's apparatus as taught by Meyer because this would allow the post base to be angularly adjusted and aligned prior to being secured.

10. Regarding claim 27, West, modified by Meyer as described above, discloses an apparatus as recited in claim 26 but does not disclose a solid lower bearing. However, West does disclose solid bearings in other embodiments (see element 32 for instance). Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a solid lower bearing as taught by West in his apparatus, previously modified by Meyer, because this would provide a stronger, more substantial arrangement, increasing the strength of the assembly.

11. Regarding claim 28, West, modified by Meyer as described above, further discloses the concave bottom surface of the post base and the convex top surface of the lower bearing comprise semispherical curved surfaces.

12. Regarding claim 32, West, modified by Meyer as described above, discloses an apparatus as recited in claim 26 but does not disclose textured surfaces. However, West does disclose textured surfaces in other embodiments (see element 32a for instance). Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use textured bearing surfaces because this would

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increase the friction between the surfaces, helping to better secure and strengthen the assembled apparatus.

13. Regarding claim 33, West discloses a mounting apparatus for a post, comprising: a substructure (180) comprising a substantially flat mounting surface; an attachment rod (158) angularly fixed and immoveably secured to the substructure and extending upwardly from the mounting surface; a disc-shaped lower bearing (151) positioned above the mounting surface of the substructure, the disc shaped lower bearing comprising: a substantially flat bottom surface, a convex curved top surface, and a hole (157) extending through the center of the disc to admit the attachment rod; a post base (153) positioned above the lower bearing, the post base comprising: a side wall (172) dimensioned to engage an inner sidewall of a post (156), and a bottom comprising a convex curved surface adapted to slidably engage the top surface of the lower bearing and to admit the attachment rod; and a fastener (169) to engage the attachment rod to releasably secure the mount in position. West does not disclose an elongate slot or a solid lower bearing. However, West does disclose solid bearings in other embodiments (see element 32 for instance). Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a solid lower bearing as shown by West because this would provide a stronger, more substantial arrangement, increasing the strength of the assembly. Further, Meyer discloses a mounting apparatus having a post base (17, 25, 31) with an elongate slot (21) therethrough that allows the post base to be angularly adjusted by translating a rod in the slot. Accordingly, it would have been obvious to one of ordinary skill in the art at the

time the invention was made to include an elongate slot in West's apparatus as taught by Meyer because this would allow the post base to be angularly adjusted and aligned prior to being secured.

14. Regarding claim 34, West, modified by Meyer as described above, further discloses the convex and concave surfaces are semispherical.

15. Regarding claim 38, West discloses an adjustable post mount comprising: a stationary portion comprising a substructure (180) that provides a substantially flat mounting surface and an attachment rod (158) comprising a free end that extends upwardly from the mounting surface and a fixed end that is attached to the substructure so as to prevent angular displacement of the attachment rod; a disc-shaped lower bearing (151) comprising a convex, semispherically curved upper surface, a substantially flat bottom surface and a center hole (157) through which the attachment rod extends; a post base (153) that rests on the lower bearing, the post base comprising: a concave, semispherically curved bottom surface corresponding in curvature to the upper surface of the lower bearing; and dimensioned to receive the attachment rod; and a fastener (169) securable to the attachment rod wherein the adjustable post mount may be releasably locked into position and readjusted. West does not disclose an elongate slot or a solid lower bearing. However, West does disclose solid bearings in other embodiments (see element 32 for instance).

Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a solid lower bearing as shown by West because this would provide a stronger, more substantial arrangement, increasing the strength of the

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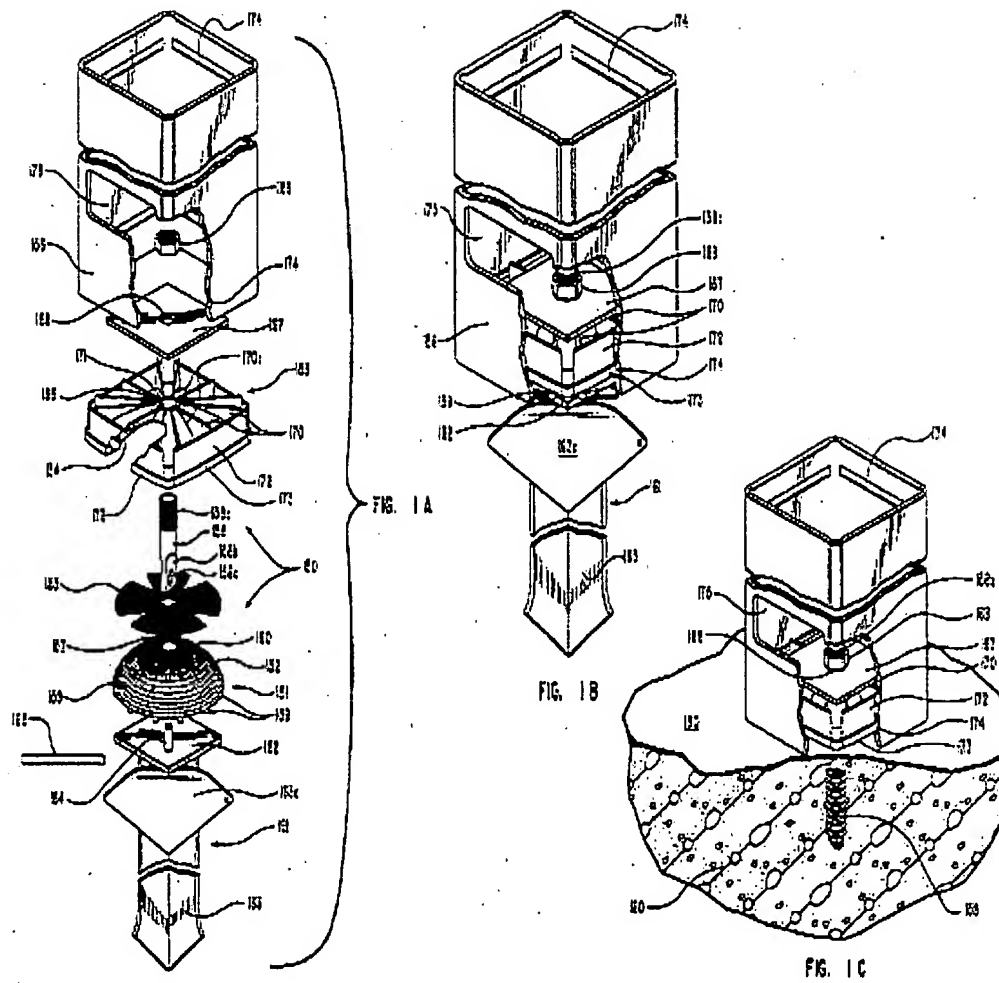
assembly. Further, Meyer discloses a mounting apparatus having a post base (17, 25, 31) with an elongate slot (21) therethrough that allows the post base to be angularly adjusted. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include an elongate slot in West's apparatus as taught by Meyer because this would allow the post base to be angularly adjusted and aligned prior to being secured.

16. Regarding claim 39, West, modified as described above, discloses an apparatus as recited in claim 38 but does not disclose textured surfaces. However, West does disclose textured surfaces in other embodiments (see element 32a for instance).

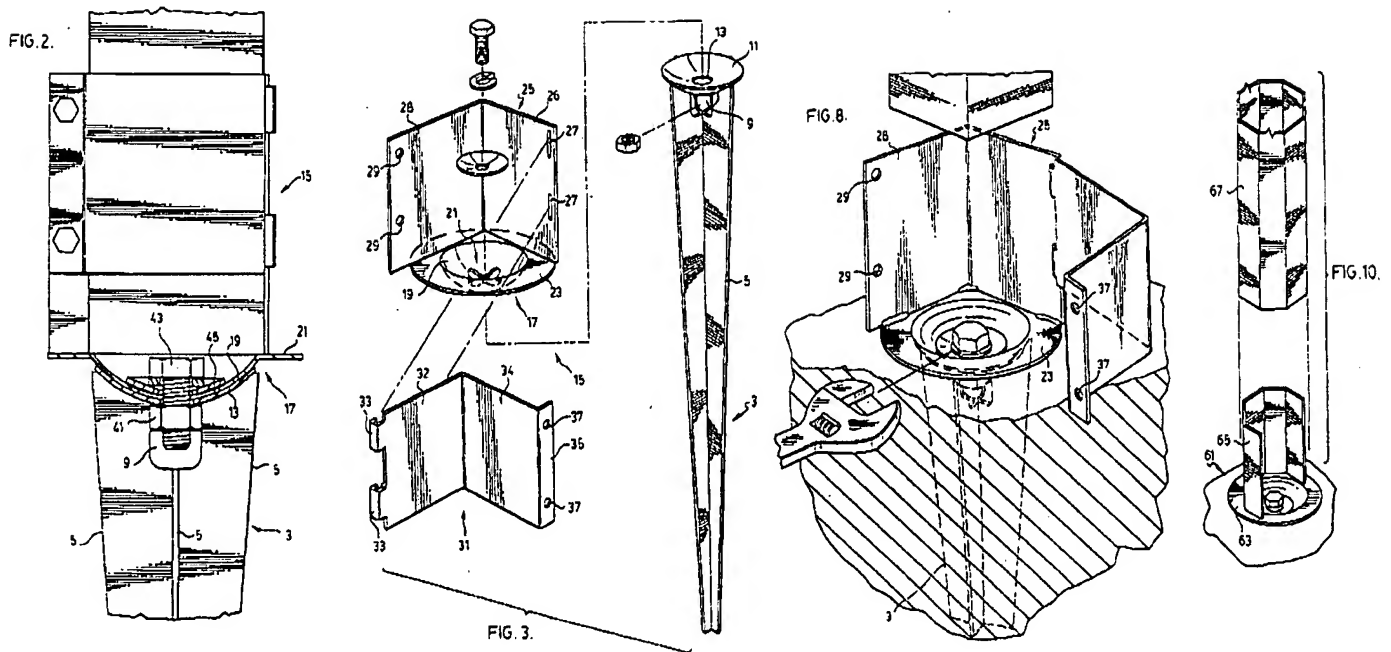
Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use textured bearing surfaces because this would increase the friction between the surfaces, helping to better secure and strengthen the assembled apparatus.

17. Regarding claim 41, West, modified as described above, further discloses the substructure comprises an anchor (viewed as the portion of the concrete contacting the threads of the rod) in which the attachment rod is permanently embedded.

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West '682 Figures 1A, 1B, and 1C



Meyer '390 Figures 2, 3, 8, and 10

18. Claims 29-31, 35-37, and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over West in view of Meyer and further in view of Katt (US Patent Number 3820906).

19. Regarding claims 29-31, 35, 36, and 40, West, modified by Meyer as described above, discloses a mounting apparatus as recited in claims 26, 27, 33, and 38 but does not disclose a post base designed to break away. Katt (Figure 2) discloses a post base (10, 11, etc.) comprised of grey iron (see for example column 2 lines 3-5) designed to break away in response to a predetermined or vehicle impact (see for example column 2 lines 6-10). Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a break-away post base in West's design,

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previously modified by Meyer, as taught by Katt because this would allow control over how and where the apparatus would be damaged in case of an impact.

20. Regarding claim 37, West, modified by Meyer and Katt as described above, discloses an apparatus as recited in claim 35, but does not disclose textured surfaces. However, West does disclose textured surfaces in other embodiments (see element 32a for instance). Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use textured bearing surfaces because this would increase the friction between the surfaces, helping to better secure and strengthen the assembled apparatus.

Response to Arguments

21. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip Gabler whose telephone number is (571) 272-6038. The examiner can normally be reached on Monday through Friday, 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

PFG 
5/2/2007



JAMES O. HANSEN
PRIMARY EXAMINER